



## Broadcasting Notice of Consultation CRTC 2023-138

PDF version

Ottawa, 12 May 2023

*Public record: 1011-NOC2023-0138*

### Notice of hearing

**20 November 2023**  
**Gatineau, Quebec**

**The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content**

**Deadline for submission of interventions: 27 June 2023**

**Deadline for the submission of replies: 12 July 2023**

[\[Submit an intervention/comment/answer or view related documents\]](#)

The Commission will hold a hearing starting on **20 November 2023 at 9:00 a.m. at the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec.**

[Attend the hearing or listen to it online.](#)

The Commission is launching Step 1 of a three-step process to establish a modernized regulatory framework regarding contributions to support Canadian and Indigenous content. This framework, once implemented, will set out the contributions (which may include both expenditures and other types of supports) that broadcasting undertakings, including online undertakings (i.e., online audio and video services), will be required to make to support Canadian and Indigenous audio and video content. Online audio and video services that are exempted from the requirement to register with the Commission (see Broadcasting Notice of Consultation 2023-139, also issued today) will not be required to make these contributions.

In this notice, the Commission seeks comments on a proposed new contribution framework as well as the initial contributions online audio and video services could be asked to make to the creation and discoverability of Canadian and Indigenous content.

A new and modernized framework should recognize the new perspectives and opportunities that online undertakings bring to the broadcasting system, and ensure flexibility and adaptability in the future. For these reasons, the Commission intends to apply an approach that recognizes that each broadcasting undertaking or group of undertakings is unique, and that focuses on desired performance standards and measures of success. At the same time, it is essential for the approach to ensure that the principles of regulatory fairness and equitability are upheld across all contributors. Further, by

considering the possibility of a group-based approach to contributions (where applicable) the Commission aims to provide greater flexibility and a reduced administrative burden.

The Commission will accept comments that it receives on or before **27 June 2023**. Only parties who file comments may file a reply to matters raised during the comment period. Replies must address only the issues raised during the comment period. The deadline for the filing of replies is **12 July 2023**.

Today, the Commission has also issued Broadcasting Notice of Consultation 2023-139, in which it is seeking comments on its proposed *Online Undertakings Registration Regulations* and on the undertakings that should be exempt from those regulations, and Broadcasting Notice of Consultation 2023-140, in which it is seeking comments in regard to a review of certain exemption orders and the transition from conditions of exemption to conditions of service for broadcasting online undertakings. Interested persons should note that each of these notices of consultation initiates a separate proceeding, and that they must file comments on the record of each proceeding in which they would like to participate. Given certain common elements between the various proceedings, interested persons should monitor the developments of the other proceedings.

## Introduction

1. On 27 April 2023, the *Online Streaming Act* came into force.<sup>1</sup> This Act includes, among other things, amendments to the former *Broadcasting Act* that account for the impact that Internet audio and video<sup>2</sup> services have had on the Canadian broadcasting system. The current *Broadcasting Act* provides the Commission with clear powers and tools to, among other things, regulate online undertakings operating in whole or in part in Canada, regardless of their country of origin.<sup>3</sup> As set out in the current *Broadcasting Act*, “online undertaking” means “an undertaking for the transmission or retransmission of programs over the Internet for reception by the public by means of broadcasting receiving apparatus.”
2. In the present notice, the Commission is launching Step 1 of a three-step process to establish a modernized contribution framework to support the Canadian broadcasting system, including Canadian and Indigenous content. This framework, once implemented, will set out the contributions that broadcasting undertakings, including online audio and video undertakings (online undertakings), will be required to make to support the creation, distribution, promotion and discoverability of Canadian and Indigenous audio and video content. In Step 2, the Commission will build on

---

<sup>1</sup> *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, SC 2023, c 8.

<sup>2</sup> The term “video” is used in this notice of consultation, whereas the term “audio-visual” is used in the amended *Broadcasting Act*.

<sup>3</sup> Under the former *Broadcasting Act*, in order to legally operate in whole or in part in Canada, a broadcasting undertaking was required to be either licensed by the Commission or exempted from the obligation to hold a licence by way of an exemption order. Under the current *Broadcasting Act*, to legally operate in Canada, online undertakings no longer need to hold a licence or be exempt from holding a licence.

information gathered in Step 1 and examine more closely the various policy elements of the framework. In Step 3, the Commission intends to finalize each applicable undertaking's or ownership group's tailored contribution requirements.

3. As part of Step 1, the Commission will hold a public hearing in Gatineau, Quebec, to begin **20 November 2023**, that will focus on whether the Commission should establish initial base contribution requirements for online undertakings, and on the possible recipients of those contributions. Once the new contribution framework is finalized, the base contribution requirements will form part of the overall contribution requirements that an online undertaking may be required to make. In other words, the Commission is requesting interested persons to comment on who should contribute, how much they should contribute, and how they should make their contributions.
4. As part of this proceeding, the Commission is seeking comments on a proposed new contribution framework and other related matters. Issues and questions are set out below. As explained in greater detail below, this proceeding and any subsequent decision ultimately made by the Commission will be limited to the issues of the applicability of the new contribution framework and the initial base contributions that online broadcasting undertakings may be required to make.
5. The Commission notes that existing contributions by traditional broadcasters will not change as a result of Step 1, but will form part of the Step 2 discussion. Issues in this regard will be addressed in greater detail during Step 2.

### **Amendments to the *Broadcasting Act* by the *Online Streaming Act***

6. The *Broadcasting Act* sets out the broadcasting policy for Canada and the powers of the Commission to regulate and supervise the Canadian broadcasting system. Under the current *Broadcasting Act*, the Commission is mandated to regulate and supervise the Canadian broadcasting system in a flexible manner that takes into account the diversity of regions, languages, cultures, abilities, and circumstances of the people and businesses that contribute to, benefit from, and make use of the Canadian broadcasting system.
7. The *Broadcasting Act* has been updated to ensure that online undertakings invest in Canadian audio and video content and make it available to Canadians. The policy objectives of the current *Broadcasting Act* also establish that traditional and online undertakings shall contribute in an appropriate manner to the creation, production and distribution of Canadian and Indigenous content in Canada's two official languages, as well as in Indigenous languages. These policy objectives are also intended to ensure that the Canadian broadcasting system serves the needs and interests of all Canadians, including Canadians from Black or other racialized communities and Canadians of diverse ethnocultural backgrounds, socio-economic statuses, abilities and disabilities, sexual orientations, gender identities and expressions, and ages.

8. In order to implement these objectives, the current *Broadcasting Act* expands the definition of “broadcasting undertaking” to include online undertakings, which form a type of broadcasting undertakings that is distinct from traditional services, such as radio stations or television stations and services. For clarity, audio and video creators, whether amateur or professional, are not broadcasting undertakings or online undertakings and are therefore not subject to the current *Broadcasting Act*. This means that the Commission cannot make regulatory requirements that apply to producers or podcasters, for example, or other content creators. The current *Broadcasting Act* only applies to broadcasters, which includes those that offer content online.
9. The Commission can regulate online undertakings through a new order-making power, set out in section 9.1 of the current *Broadcasting Act*, which allows it to impose conditions on the operation of broadcasting undertakings (referred to as “conditions of service”). Conditions of service can only be imposed following a public proceeding, but can apply to a particular undertaking, a class of undertakings, or all undertakings.
10. Further, the current *Broadcasting Act* broadens the Commission’s regulation making authority, such that regulations may now be imposed not only on licensed broadcasting undertakings, but also on online undertakings.
11. The current *Broadcasting Act* also allows the Commission to require broadcasting undertakings, including online undertakings, to make expenditures for the purposes of developing, financing, producing or promoting Canadian audio or video programs; supporting, promoting or training Canadian creators of such programs for broadcasting by broadcasting undertakings; supporting broadcasting undertakings offering audio or video programming services that are of exceptional importance to the achievement of the policy objectives set out in subsection 3(1) of the current *Broadcasting Act*; supporting participation by persons, groups of persons or organizations representing the public interest participation in proceedings before the Commission; or supporting the development of tools or initiatives that are efficient and necessary for the achievement of the above-noted policy objectives.

## **A modernized contribution framework**

12. The ways in which Canadians consume and create content have been changing for some time. Online services and platforms have been adopted by viewers and listeners across the country and the consumption of traditional television and radio services is declining. This decline means that many of the Commission’s existing policy and regulatory tools have become less effective in supporting the policy objectives of the former *Broadcasting Act*. As Canadians embrace new ways of consuming content, the Commission acknowledges that a new approach for ensuring that all broadcasting undertakings, including online undertakings, are contributing to the policy objectives set out in the current *Broadcasting Act* is key to the continued success of the Canadian broadcasting system.

13. In line with recent amendments to the *Broadcasting Act*, the Commission recognizes that it continues to be appropriate for different types of broadcasters – whether traditional or online, Canadian or foreign – to support the audio and video elements of the Canadian broadcasting system in different, yet equitable ways.
14. In particular, the current *Broadcasting Act* directs the Commission to regulate and supervise the Canadian broadcasting system in a flexible manner that, among other things:
- takes into account the different characteristics of English-language, French-language and Indigenous-languages broadcasting and the specific needs and interests of official language minority communities (OLMC) in Canada and of Indigenous Peoples;
  - takes into account the nature and diversity of services provided by broadcasting undertakings as well as their size, their impact on the Canadian creation and production industry, their contribution to the implementation of the broadcasting policy set out in subsection 3(1) of the current *Broadcasting Act*, and any other characteristics that may be relevant in the circumstances;
  - ensures that any broadcasting undertakings that cannot make maximum or predominant use of Canadian creative and other human resources in the creation, production and presentation of programming make the greatest practicable use of such resources and contribute to that programming in an equitable manner;
  - facilitates the provision to Canadians of programs created and produced in both official languages, as well as in Indigenous languages;
  - facilitates the provision of programs that are accessible without barriers to Persons with Disabilities; and
  - takes into account the variety of broadcasting undertakings to which the *Broadcasting Act* applies and avoids imposing requirements on any class of broadcasting undertaking if that imposition will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*.
15. The Commission considers that a new and modernized framework should recognize the new perspectives and opportunities that online undertakings bring to the broadcasting system, and ensure flexibility and adaptability in the future. For these reasons, the Commission intends to apply an approach that recognizes that each broadcasting undertaking or group of undertakings is unique, and that focuses on desired performance standards and measures of success. At the same time, it is essential for the approach to ensure that the principles of regulatory fairness and equity are upheld across all contributors.

16. With this in mind, the Commission is proposing to develop a new framework for regulating the contributions made by certain traditional broadcasting undertakings or ownership groups, and those to be made by online undertakings, in support of the Canadian broadcasting system. In developing this new approach, the Commission considered the current legislative and regulatory requirements of traditional players, which consist mainly of exhibition and expenditure requirements, and the need to adapt those requirements to a regulatory framework that includes online undertakings.
17. While the current approach has historically worked well to ensure that Canadians have access to a diversity of content and content sources from Canada and around the world, applying the existing tools to online undertakings presents a number of unique issues. For example, how can expenditure requirements be reasonably applied to a service that does not necessarily offer its audio and video content for the purpose of earning direct revenues, but instead gives that content away for free when tied to retail services unrelated to broadcasting? Similarly, although exhibition requirements have been a key regulatory tool applied to traditional linear radio and television services, in their current form, such requirements may not be applicable to on-demand and personalized services.
18. In addition, the Commission recognizes that many of the current funding programs in place to support the creation of Canadian content (such as access to production funds and certain tax credits) are not accessible by international online undertakings that produce original content. There are many reasons for this, including that domestic broadcasting undertakings are not eligible to receive funds directly, and that these programs often favour the domestic ownership of copyright. The new contribution framework will need to consider how best to ensure equitable treatment between domestic and international online undertakings in supporting the creation of Canadian and Indigenous content.
19. Broadly speaking, the objectives of this new contribution framework are to ensure that:
  - Canadians continue to have access to a wide range of choice of high-quality audio and video content that is made by and for Canadians, as well as the best content from around the world, regardless of the platform, device or technology they wish to use;
  - both Canadian and international online undertakings participate in the support of Canadian and Indigenous audio and video content and have equitable access to those supports when creating this content;
  - the regulatory burden on all broadcasting undertakings is proportionate and relevant;
  - contributions are considered at the level of the “broadcasting ownership group,” where applicable, in order to provide greater flexibility and a reduced administrative burden;

- contributions are fair, proportionate, and appropriate to the nature of the service while ensuring the sustainable financing of Canadian and Indigenous audio and video content, in both official languages as well as Indigenous languages;
- funds, as a component of the new contribution framework, provide a sustainable financing option for original Canadian and Indigenous content, both audio and video, and support other public policy objectives;
- funds are reflective of Canada's diversity and meet accessibility requirements in the projects they support;
- Indigenous Peoples, their stories and their music are seen and heard, including through content broadcast or made available in Indigenous languages;
- incentives and other regulatory measures are introduced to better support the creation and distribution of Canadian content by communities that are currently under-represented in the broadcasting system, while also ensuring that this content is reflective of and relevant to these communities; and
- broad distribution and discoverability of Canadian and Indigenous audio and video content is achieved, domestically and internationally.

20. In support of these objectives, the Commission proposes that all broadcasting undertakings (traditional as well as online) be required to support the Canadian broadcasting system (audio and video elements) through a standardized contribution framework that allows for specific requirements to be tailored to a particular undertaking or group of undertakings. In particular, the Commission is considering an approach whereby it would establish an overall contribution commitment that would apply to a particular undertaking or group of undertakings and that could be allocated among three broad categories of requirements (described below). These requirements would be implemented through an order issued pursuant to section 9.1 and subsection 11.1(2) of the current *Broadcasting Act*.

21. The first category of contributions, referred to as a base requirement, could require broadcasting undertakings or ownership groups to make a financial contribution to specified funds that support Canadian artists or programming and the policy objectives outlined above.

22. The second category, referred to as a flexible financial requirement, could require broadcasting undertakings or ownership groups to contribute an additional amount, with undertakings choosing where to direct their contributions from among a number of options. The specific options would be the subject of a future public process as part of Step 2, but the Commission envisions that these could include direct expenditures on certain types of programming (for example, original French-language programs,

programs of national interest<sup>4</sup> (PNI), local news, community programs and independent productions), spending on training and internships, or additional contributions to funds.

23. The third category, referred to as intangible requirements, could require broadcasting undertakings or ownership groups to make additional, less quantifiable commitments to support Canadian programming and creators. Again, the specific options would be the subject of a future public process as part of Step 2, but these requirements could include specific commitments to the promotion, discoverability or prominence of Canadian or Indigenous content, the carriage of services in French, Indigenous, or other languages, maintaining a certain percentage of Canadian and Indigenous content in an on-demand catalogue, commitments to achieving public policy objectives, or other commitments proposed by an undertaking and deemed acceptable by the Commission.
24. The intent is that broadcasting undertakings or ownership groups could contribute to all three categories of contributions in a manner that is appropriate and reflective of their unique role in the Canadian broadcasting system.
25. The Commission considers that developing a new contribution framework along the lines outlined above would allow for flexibility while ensuring that the policy objectives of the current *Broadcasting Act* are achieved. It could also encourage innovation and engagement, while allowing for adjustments over time. That being said, during Step 1, the Commission is proposing this new approach as a starting point for discussion, and will consider comments received during this process as part of future processes to further develop this new contribution framework. The Commission is therefore open to considering modifications or alternative ideas proposed in the interventions submitted in response to this notice, provided that the above-noted objectives can still be achieved.

## **Objectives of the three-step proceeding**

### **Step 1**

26. Developing a new, flexible contribution framework, which involves reviewing or creating policies for each of the above-noted contribution categories and tailoring the contribution agreements of applicable broadcasting undertakings or ownership groups, will take time. However, given the impact that online undertakings are having on the Canadian broadcasting system, and in recognition of the fact that traditional broadcasters currently make contributions to that system, the Commission is considering the option of an initial base contribution from online undertakings as an

---

<sup>4</sup> That is, certain types of programs (drama, long-form documentary, music/variety and award shows), the production of which helps to ensure the fulfilment of objectives set out in the *Broadcasting Act* relating to a Canadian broadcasting system that is varied and comprehensive, and encourages the development of Canadian expression by providing programming that reflects Canadian values and attitudes (see Broadcasting Regulatory Policy 2015-86).



important early step to ensure continued support for Canadian and Indigenous programming and creators.

27. As noted above, the Commission proposes to develop and implement this new contribution framework over three steps. The focus of Step 1 (initiated by this notice of consultation) is to make determinations and subsequently issue a decision (or decisions) in regard to the following three issues:
- a) **Applicability:** broadcasting undertakings (traditional and online) to which the framework should apply;
  - b) **Initial base contributions:** if this option is deemed beneficial to the broadcasting system, the percentage of annual Canadian broadcasting revenues that applicable online undertakings would initially be required to make in support of Canadian content (and that could form part of the new contribution framework along with the other contribution categories following Step 2); and
  - c) **Funds:** which funds could be the recipients of the possible initial base contributions.
28. The initial contributions would be imposed only on certain online undertakings following Step 1. Proposed orders imposing initial base contributions on applicable online undertakings may be published either simultaneously with or shortly following the Step 1 decision(s). If so, the Commission will follow the publication and additional consultation requirements of the current *Broadcasting Act* when publishing those orders.<sup>5</sup>
29. Step 1 comprises two consultative steps: a written consultation, and a public hearing to begin on 20 November 2023. During the written consultation part of Step 1, the Commission is seeking comments on the three issues identified in paragraph 27 above, but will also seek comments more broadly on the issues relating to the objectives of and approach for the new contribution framework, including whether the overall contribution levels that online undertakings will be required to adhere to should be comparable to those currently in place for traditional broadcasters.
30. However, during the public hearing, the Commission intends to limit the discussion to the three issues identified in paragraph 27 (i.e., the applicability of the framework, the possible initial base contributions, and the funds that would receive those contributions) in order to ensure that a decision(s) on those points can be issued in a timely manner.
31. The additional information gathered during Step 1 will inform the processes initiated by the Commission in Step 2. The Commission acknowledges that the discussion on the overall contribution commitment and the initial base contributions are linked. Consequently, the former may also be discussed during Step 1.

---

<sup>5</sup> This includes, where appropriate, the requirements set out in section 5.2, subsection 9.1(4), subsection 11.1(2), and subsection 11.1(7) of the current *Broadcasting Act*.

## **Step 2**

32. The focus of Step 2 will be to build on the information gathered in Step 1, including the general objectives of the contribution framework and the specific objectives relating to support for the creation of Canadian and Indigenous programming, the development of Canadian and Indigenous artists, diversity and inclusion, promotion, and discoverability by traditional and online undertakings. Questions relating to the definitions of Canadian content and of Indigenous content will be addressed in a separate proceeding.

## **Step 3**

33. Finally, for Step 3, the Commission intends to finalize each applicable undertaking's or ownership group's tailored contribution requirements.

## **Step 1 issues and questions**

34. In the sections that follow, the Commission sets out specific issues for comment that relate to the proposed new contribution framework and that fall under Step 1. Each section includes a list of questions to which interveners are invited to reply. These issues are as follows:

- the applicability of the proposed contribution framework;
- the overall contribution level;
- the initial base contribution requirement that may be applied to certain online undertakings; and
- the funds that could be the recipients of those contributions.

## **Applicability**

35. The current *Broadcasting Act* sets out an amended definition of “broadcasting undertaking” that includes online undertakings, and includes a definition of “online undertaking,” which, as noted above, means “an undertaking for the transmission or retransmission of programs over the Internet for reception by the public by means of broadcasting receiving apparatus.” This definition is broad and captures a large number of entities operating over the Internet.

36. Paragraph 5(2)(h) of the current *Broadcasting Act* sets out that the Canadian broadcasting system should be regulated in a manner that avoids imposing regulatory requirements on broadcasting undertakings if that imposition will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).

37. The Commission is of the view that while there are a very large number of broadcasting undertakings (traditional and online) available to Canadians, many do not have a material impact on the Canadian broadcasting system. Because of their

limited number of users or subscribers, low revenues, or for other reasons, it would be inefficient to impose contribution requirements on those broadcasting undertakings.

38. As such, the establishment of a threshold above which undertakings would be required to contribute to the Canadian broadcasting system is one of the objectives of Step 1. An appropriate threshold should ensure that larger players contribute in a way that is commensurate to the place they occupy and the role they play in the Canadian broadcasting system, while ensuring that smaller players can continue to operate without facing a significant burden that could jeopardize their presence in the market. The Commission notes that online audio and video services that will be exempted from the requirement to register with the Commission following the process initiated by Broadcasting Notice of Consultation 2023-139 will not be required to make these contributions.

39. In regulating and supervising the Canadian broadcasting system, the Commission already relies on thresholds to trigger requirements or exemptions. For example, it uses revenue levels to determine whether a radio station must make Canadian content development (CCD) contributions. Further, the Commission uses subscriber numbers to trigger licensing requirements for discretionary programming services and broadcasting distribution undertakings (BDU).

40. In addition, in concurrent proceedings,<sup>6</sup> the Commission is consulting on a proposed exemption for the following classes of online undertakings:

- online undertakings whose single activity and purpose consists of providing video games services;<sup>7</sup>
- online undertakings whose single activity and purpose consists of providing unique transactions;<sup>8</sup>
- online undertakings affiliated with a broadcasting ownership group<sup>9</sup> that have, after deducting any excluded revenue,<sup>10</sup> gross annual revenues of less than \$10 million; or
- online undertakings that have no affiliation whatsoever with a broadcasting ownership group, if they have, after deducting any excluded revenue, gross annual revenues of less than \$10 million.

---

<sup>6</sup> See Broadcasting Notice of Consultation 2023-139 and Broadcasting Notice of Consultation 2023-140.

<sup>7</sup> While the Commission has historically held the view that video games are not generally broadcasting, the Commission is proposing to explicitly exempt them to avoid any ambiguity.

<sup>8</sup> The Commission is proposing to define “unique transaction” as a one-time rental or purchase of an individual program transmitted or retransmitted over the Internet.

<sup>9</sup> The Commission is proposing to define “broadcasting ownership group” as a person that controls one or more persons that carry on one or more affiliated broadcasting undertakings to which the *Broadcasting Act* applies and includes all persons that carry on those broadcasting undertakings.

<sup>10</sup> The Commission is proposing to define “excluded revenue” as revenue that originates from providing video games services or unique transactions.

41. Sections 2.1 and 4.1 of the current *Broadcasting Act* also provide for a rather complex set of exclusion provisions with respect to social media services and users who upload programs on these services. The Commission does not intend to regulate any aspect of a social media service, nor does it intend to “prescribe” user-uploaded content on social media services for the purpose of regulating such content, as part of this proceeding. The Commission is also cognizant that it should avoid imposing regulatory requirements on broadcasting undertakings if that imposition will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1) of the current *Broadcasting Act*.
42. Nevertheless, certain aspects of some social media services may be a subset of a larger concept of what constitutes an “online undertaking.” As part of Step 1, the Commission therefore intends to explore the meaning of “social media service.” The Commission’s questions regarding social media services are intended to assist it in developing a clear understanding of the online undertakings that fall unambiguously within its jurisdiction and that could be subject to the new contribution framework being developed through this proceeding.
43. In light of the above, the Commission invites parties to respond to the following questions and requests:
- Q1. The thresholds proposed in Broadcasting Notice of Consultation 2023-139 and Broadcasting Notice of Consultation 2023-140 are being consulted on as part of those proceedings, and any decisions in that regard will be considered by the Commission in the context of this proceeding. Are there other criteria upon which the Commission should base its threshold for the purposes of the new contribution framework? If so, what should the specific threshold be (e.g., what specific revenue or subscriber level should apply)? Indicate whether the criteria or threshold should be different for audio versus video services and online versus traditional undertakings.
- Q2. In regard to Q1, if you are proposing to consider elements other than Canadian broadcasting revenues, please indicate how the Commission should measure those elements.
- Q3. Are there other factors that the Commission should take into consideration in establishing which broadcasting undertakings do not have a material effect on the implementation of the broadcasting policy set out in subsection 3(1) of the current *Broadcasting Act* and should therefore be exempted from the requirement to make specific contributions to the Canadian broadcasting system?
- Q4. How should the Commission determine the appropriate level of contributions in cases where only a portion of an online undertaking’s services are covered by the *Broadcasting Act*?
- Q5. How should the Commission define “social media service”? What, if any, criteria should be used to assess whether an online undertaking is providing a social media service?

## Contribution requirements

44. The current Canadian funding infrastructure is a complex model of direct and indirect financial supports. These include licence fees and royalties from Canadian broadcasters, tax credits from the federal and provincial governments, and financial support from funds for audio and video content, all of which play key roles in cultivating a strong Canadian production sector.

## Funds

45. One of the key mechanisms through which the Commission currently ensures that broadcasting undertakings contribute to the creation and presentation of Canadian content is by mandating that certain undertakings contribute a portion of their revenues to a variety of funding organizations, which include the following:

- the Canada Media Fund;
- the Canada Music Fund;
- Certified Independent Production Funds (CIPF);<sup>11</sup>
- FACTOR/Musicaction;
- Radio Starmaker Fund/Fonds RadioStar;
- the Community Radio Fund of Canada (CRFC); and
- the Independent Local News Fund (ILNF).

46. These organizations support the creation, distribution and promotion of Canadian audio and video programming. In some instances, these production funds also benefit from the Commission's tangible benefits policy, set out in Broadcasting Regulatory Policy 2014-459, whereby financial contributions are made in the context of acquisitions of assets or changes in effective control.

47. The Commission has also authorized the creation of two non-production funds in support of the policy objectives of the *Broadcasting Act* as part of the tangible benefits resulting from BCE Inc.'s acquisition of CTVglobemedia Inc. These are the Broadcasting Participation Fund (BPF), which provides financial assistance to public interest and consumer groups representing non-commercial user interests and the public interest in Commission proceedings, and the Broadcasting Accessibility Fund (BAF), which supports innovative projects to increase the accessibility of broadcasting content in Canada.

---

<sup>11</sup> The following independent production funds have been certified by the Commission as eligible to receive contributions from BDUs: the Bell Fund, the Canadian Independent Screen Fund for BPOC Creators, the Cogeco Television Production Program, the Independent Production Fund, the Nova Scotia Independent Production Fund, the Quebecor Fund, the Remstar Fund, the Rogers Group of Funds, the Shaw Rocket Fund, Telefilm Canada, and the TELUS Fund.

48. Many of these funds have been operating successfully for several decades. Some, like the Canada Media Fund, FACTOR and Musicaction, administer contributions made by broadcasting undertakings in addition to federal public funding from the Department of Canadian Heritage. Others rely solely on contributions mandated by the Commission. The Canada Media Fund is the largest fund supporting video production. It receives funding from the Department of Canadian Heritage under the terms of a contribution agreement as well as from BDUs. It is intended to ensure stable and significant funding of quality Canadian content. The Canada Media Fund finances projects through many different streams and envelopes, all of which have different objectives and criteria. The majority of the Canada Media Fund's allocations is disbursed through the Performance Envelope Program, which relies on partnerships between Canadian broadcasters and Canadian producers to create content being developed for distribution on at least two platforms, one of which must be television. While broadcasters receive a funding envelope allocation based on their track record of supporting Canadian content, the funds for these projects go directly to applicants. International online undertakings are not currently eligible to receive funding from the Canada Media Fund.
49. The Commission has also certified a number of independent production funds that receive funding from BDUs and other sources. In order to be certified to receive and administer contributions by BDUs, a fund must meet the criteria established by the Commission, which are set out in the appendix to Broadcasting Regulatory Policy 2016-343. These criteria require that productions receiving funding achieve at least six points for Canadian content certification or be eligible as a pilot project recognized by the Commission.<sup>12</sup> The Commission does not require that intellectual property rights be held by a Canadian in order to receive funding from a CIPF. These CIPFs ensure that additional funding demands can be met, such as funding for programs that do not necessarily meet the Canada Media Fund criteria. The Commission's policy regarding CIPFs is intended to provide flexibility in the funding of Canadian programs. As with the Commission's other regulatory policies, the Commission may decide to review or amend its policy with respect to CIPFs following a public process.
50. For audio content, Musicaction supports the production and marketing of French-language music, while FACTOR plays a similar role for English-language music. In addition to Musicaction and FACTOR, the Commission has approved a number of eligible parties and initiatives to which CCD funding may be directed, at the licensees' choosing.<sup>13</sup>

---

<sup>12</sup> The Commission announced in Broadcasting Regulatory Policy 2015-86 that it would certify, as Canadian, programs that meet alternative certification criteria, including a reduced number of points, on a pilot basis.

<sup>13</sup> These parties and initiatives must fulfill the criteria for eligible initiatives set out in paragraphs 117-132 of Broadcasting Regulatory Policy 2022-332. Examples of eligible initiatives as well as ineligible initiatives are provided on the [Commission's Canadian Content Development Contributions and Eligible Initiatives](#) webpage.

51. As Canadians increasingly access audio and video content through on-demand services such as Netflix, Spotify, Crave, or Apple Music, the revenues of traditional broadcasting undertakings are trending downwards. In addition, contributions stemming from tangible benefits are a less reliable source of funding as ownership transactions are hard to predict in a highly concentrated broadcasting environment. At the same time, the costs associated with the production of music by artists and the creation of video content continues to climb. This puts the financing of current funds at risk.
52. A primary objective of Step 1 is to discuss the possible establishment of an initial base contribution requirement that would apply to certain online undertakings and that, once finalized, would form part of the new contribution framework. For Step 1, should an initial base contribution be implemented, the Commission would make a determination as to which funds could be the recipients of the initial base contributions by online undertakings.
53. It is the Commission's view that funds financed through the regulatory framework need to reflect the updated elements of the broadcasting policy for Canada as set out in the current *Broadcasting Act*. In particular, there is a need for funds that would better support programs that serve the needs and interests of Indigenous Peoples, OLMCs, Canadians from racialized communities, and Canadians of diverse ethnocultural backgrounds, socio-economic statuses, abilities and disabilities, sexual orientations, gender identities and expressions, and ages, and that treat Canadian and international online undertakings equitably.
54. The Commission considers that contributions other than to funds (such as Canadian programming expenditures [CPE]) would more appropriately fit into the flexible financial requirement of the new contribution framework. Detailed discussions and determinations in this regard will take place during Step 2. As noted above, existing contributions by traditional broadcasters will not change as a result of Step 1, but will form part of the Step 2 discussion.

### **Digital media broadcasting undertakings**

55. Online undertakings (previously known as digital media broadcasting undertakings), including those operated by Canadian broadcasters, previously operated under the Exemption order for digital media broadcasting undertakings (DMEO), set out in the appendix to Broadcasting Order 2012-409.<sup>14</sup> Online undertakings are currently not subject to any contribution requirements.<sup>15</sup>

---

<sup>14</sup> As set out in that exemption order, a digital media broadcasting undertaking “provides broadcasting services, in accordance with the interpretation of ‘broadcasting’ set out in Broadcasting Public Notice 1999-84/Telecom Public Notice 99-14, that are a) delivered and accessed over the Internet; or b) delivered using point-to-point technology and received by way of mobile devices.”

<sup>15</sup> In Broadcasting Notice of Consultation 2023-140, the Commission has called for comments on whether the DMEO remains necessary to fulfil any regulatory purpose relating to online undertakings or whether

56. In regard to contribution requirements for the support of Canadian programming, the Commission invites parties to respond to the following questions and requests:

Q6. Generally speaking, commercial radio stations with total revenues exceeding \$1,250,000 are required to make basic CCD contributions of \$1,000 plus 0.5% of revenues in excess of \$1,250,000. Large English-language vertically integrated television groups have CPE requirements of approximately 30% of gross revenues from the previous broadcast year, while large French-language vertically integrated television groups have CPE requirements of up to 45% of gross revenues from the previous broadcast year, along with a requirement to produce original French-language programs. Licensed BDUs are generally required to contribute 4.7% of their previous broadcast year's gross revenues relating to broadcasting activities to Canadian programming, less any allowable contribution to local expression. With this in mind, under the new contribution framework, should the overall contribution commitment of online undertakings be comparable to the existing contribution levels of traditional broadcasting undertakings? If so, which traditional broadcasting undertakings? Please explain.

Q7. Many of the Commission's existing contribution requirements are calculated on the basis of annual revenues. On what basis should the initial base contribution level and the overall contribution commitment of online undertakings be calculated? If the Commission were to use annual revenues, please comment on the appropriateness of the following definition:<sup>16</sup>

**Annual revenues** means revenues attributable to the person or that person's subsidiaries and/or associates, if any, collected from the Canadian broadcasting system across all services during the previous broadcast year (i.e., the broadcast year ending on 31 August of the year that precedes the broadcast year for which the revenue calculation is being filed), whether the services consist of services offered by traditional broadcasting undertakings or by online undertakings. This includes online undertakings that operate in whole or in part in Canada and those that collect revenue from other online undertakings by offering bundled services on a subscription basis. The Commission will accommodate requests for alternative reporting periods and permit respondents to file data based on the closest quarter of their respective reporting years.

Q8. What would constitute an appropriate level of initial base contributions for online undertakings? Should this initial base contribution be the same for online undertakings operating audio services versus those operating video services? Please explain and specify the level that should be established for each type of service.

---

any changes to that order are required (such as amendments to, or the replacement or repealing of the order).

<sup>16</sup> This definition has been proposed for comment in Broadcasting Notices of Consultation 2023-139 and 2023-140.



Q9. In the current system a variety of funds exist to support the creation and promotion of Canadian content. In what ways are the existing funds successful in their support of Canadian content generally, and in what ways could they be improved? Similarly, do the existing funds sufficiently support the objectives of the current *Broadcasting Act*, including those relating to OLMCs, diversity, inclusion and accessibility? How can they be improved? For example, should the Commission consider amending the CIPF criteria?

Q10. The current *Broadcasting Act* sets out that the Commission “may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the purposes of [...] supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under this Act.” Should the Commission direct a portion of initial base contributions to the BPF or other funds with similar objectives?

Q11. Should base contributions flow only to existing funds or could they be directed to newly created independent funds? Should online entities be permitted to create their own independent production funds, to which their contributions would flow? If yes, what criteria should they be required to meet? For any proposal, please describe the initiative, including the level of funding that would be required to support it.

Q12. How can production funds better support Canada’s diversity, inclusion and accessibility, as they relate to representation in programming, creators, or a combination of both? Should contributions or a portion of the contributions be directed towards the funds specifically dedicated to supporting diversity, inclusion and accessibility in the broadcasting system? If yes, which organizations and funds? Should new funds be created? In addition, please comment on the selection process, eligibility criteria, and reporting requirements that would be necessary to support this objective.

Q13. Comment on the possibility of a certain percentage or envelope of production funds being dedicated to Indigenous video productions and audio projects. What percentage would be appropriate and what entities should be required to contribute to such a fund? How could/should such a requirement be implemented and who should administer and be responsible for such a fund? What other considerations are relevant to the creation and management of such a fund?

Q14. Are there new funds that should be created? If so, what entities should be required to contribute to such a fund? Who should administer and be responsible for the fund?

Q15. Should the Commission require that a certain percentage or proportion of an undertaking’s or ownership group’s base contribution be directed to a particular fund or type of fund?

## **Step 2 issues and questions**

57. In the sections that follow, the Commission sets out specific issues for comment that relate to the proposed new contribution framework. Each section includes a list of questions to which interveners are invited to comment in written interventions only. These issues will not be discussed at the hearing initiated by this notice of consultation but will help to inform the Step 2 public process, which will also include a separate public hearing. These issues are as follows:

- the general objectives of the proposed new contribution framework; and
- specific elements of the contribution framework relating to the creation of Canadian programs, Indigenous broadcasting, diversity and inclusion, accessibility, and promotion and discoverability.

### **General objectives of the proposed contribution framework**

58. The Commission's intent is to design a new contribution framework that is flexible and focuses on clearly defined, measurable regulatory objectives without specifying precisely how those objectives must be achieved. This should allow applicable undertakings to determine how best to achieve established outcomes (i.e., an outcomes-based approach). This should also avoid unnecessary regulatory burden, encourage innovation, and allow regulated undertakings greater control over how they will meet their regulatory obligations. However, it would also require that the Commission determine appropriate measures of success and a plan for monitoring performance in order to ensure transparency and accountability to the Commission and to Canadians. As such, the Commission will require access to data, including financial and operational results, content identification (for example, by language or genre), audience consumption across platforms, and feedback from Canadians.

59. The Commission's general objectives in regard to contributions to Canadian programming and creators are as follows:

- the production of high-quality, original audio and video Canadian programming;
- the production of news and locally reflective content;
- increased support for French-language programming, Indigenous-created programming, and programming that is reflective of and relevant to Canada's diverse communities;
- the prominence and discoverability of Canadian programming in English, French, and Indigenous languages;
- the establishment of long-term sustainable funding for content;

- increased innovation in the production of content through the development of a more flexible, incentives-based contribution framework;
- ensured equitable access by Canadians to a full range of audio and video content; and
- the ability for Canadians to make informed choices about their audio and video services.

60. Any new contribution framework must also be considered within the larger broadcasting ecosystem. Similarly, the new contribution framework must reflect the different realities in the English- and French-language markets. Further, it must recognize that the development of regulatory measures must be undertaken in discussion and engagement with the appropriate communities, such as Indigenous Peoples, OLMCs, Persons with Disabilities, racialized and ethnocultural groups and other equity-deserving communities.

61. In light of the above, the Commission invites interested persons to respond to the following questions and requests:

Q16. Would an outcomes-based approach and customized contribution framework ensure that the broadcasting system as a whole (including online undertakings) contributes to the achievement of the Commission’s above-noted objectives? What other outcomes or objectives, other than those set out in the above list, may be required to ensure that Canada’s broadcasting system can thrive now and in the future? Is the above list of objectives complete, accurate, fair and representative of the objectives set out in the current *Broadcasting Act*?

Q17. Would the proposed new contribution framework achieve desirable policy outcomes for the Canadian audio and video broadcasting system? Why or why not?

Q18. Should the regulatory approaches for traditional broadcasting undertakings and online undertakings (audio and/or video) be separate and different, or should the Commission establish a new approach that considers the broadcasting system as a whole?

Q19. Would an outcomes-based approach and customized contribution framework, once finalized, ensure regulatory symmetry between traditional broadcasting undertakings and online undertakings?

Q20. Could/should the new contribution framework be applied to broadcasting undertakings or to broadcasting ownership groups?<sup>17</sup> If the framework is applied at

---

<sup>17</sup> The Commission is currently consulting on the definition of a “broadcasting ownership group” as part of a call for comments on a proposed exemption order for online undertakings to be registered with the Commission pursuant to the proposed *Online Undertakings Registration Regulations* (see Broadcasting Notice of Consultation 2023-139). The definition proposed in that notice of consultation reads as follows:

the ownership-group level, are there any impediments to it being implemented via orders issued pursuant to subsection 11.1(2) of the current *Broadcasting Act*?<sup>18</sup>

Q21. To what extent is the proposed new contribution framework adaptable to the needs and capacities of smaller, independent players?

Q22. What, if any, special considerations should be given to English- and French-language markets?

**Specific elements of the proposed contribution framework relating to support for Canadian programs, Indigenous broadcasting, diversity and inclusion, and promotion and discoverability**

62. Designing a new contribution framework permits the Commission to consider other incentive-based approaches to better support a number of policy objectives, by permitting undertakings to design their contributions in a way that best reflects their business models, and by providing them with increased flexibility over where and how they contribute to the Canadian broadcasting system.
63. As noted above, the Commission intends to develop and implement specific incentives in Steps 2 and 3. However, as part of Step 1, the Commission is seeking preliminary input on a number of potential incentives in order to better inform the content and scope of the notices of consultation to be issued for the subsequent steps. In particular, the Commission is seeking preliminary feedback on incentives and other regulatory tools related to supporting the creation, promotion and discoverability of Canadian programming and ensuring diversity and inclusion in the Canadian broadcasting system. The Commission recognizes that the current criteria used to determine whether audio and video content is Canadian need to be reviewed and possibly updated. This will be part of a future proceeding.

**Support for Canadian programs**

64. As discussed above, the current key supports for Canadian content stem from spending and exhibition requirements; these are coupled with incentives such as time credits and spending credits. The Commission recognizes that exhibition requirements and credits are less relevant in the online/on-demand context. Supporting Canadian content going forward will therefore require a different set of tools.
65. In light of the above, the Commission invites interested persons to respond to the following questions:

---

“a person that controls one or more persons that carry on one or more affiliated broadcasting undertakings subject to the *Broadcasting Act* and includes all persons that carry on those broadcasting undertakings.”

<sup>18</sup> Subsection 11.1(2) reads as follows: “the Commission may make an order respecting expenditures to be made by a particular person carrying on a broadcasting undertaking for any of the purposes set out in paragraphs (1)(a) to (d).”

Q23. Some online undertakings offer only or mostly Canadian-created content. Should their contribution requirements be adjusted to reflect this reality? If yes, how? What type of information should the Commission use to determine this?

Q24. Should the Commission recognize other forms of contributions to the Canadian broadcasting system, such as rights payments, predominance/carriage commitments (for example, 9.1(1)(h) or 9.1(1)(i)<sup>19</sup> services), promotion/discoverability, training/internships, or capital expenditures? If yes, how should such contributions be recognized, measured and monitored?

Q25. How can the Commission incent online undertakings to source Canadian and Indigenous content? How can the Commission facilitate creators' access to supports, and creators' ability to make their content available to domestic and non-Canadian audiences? How can the Commission better encourage partnerships between foreign online undertakings and Canadian and Indigenous creators?

Q26. In what other ways can the Commission encourage the support of Canadian and Indigenous audio and video content? What types of projects or endeavours would be the most impactful? What initiatives for the support of Canadian and/or Indigenous content are you currently exploring/considering/undertaking?

Q27. How should the Commission support Canadian and Indigenous spoken word programming in a digital context?

### **Indigenous broadcasting**

66. The current *Broadcasting Act* signals a major recognition of the importance of Indigenous Peoples and Indigenous languages in Canada's broadcasting system.
67. The current supports for Indigenous content consist mainly of federal and provincial tax credits, as well as a variety of funding from sources such as FACTOR and Musicaction, the Canada Music Fund, Telefilm Canada, the Canada Council for the Arts, the Canada Media Fund, and the Indigenous Screen Office. There is also limited funding for Indigenous radio and small television broadcasters and Indigenous broadcast production firms via the Department of Canadian Heritage's Northern Aboriginal Broadcasting Fund.
68. Currently, no requirements are imposed on conventional private broadcasters in regard to broadcasting Indigenous content. For radio, such content is predominantly broadcast via Indigenous radio stations; for television, via APTN (licensed to Aboriginal Peoples Television Network Incorporated) (which benefits from mandatory distribution on the digital basic service), plus a few new discretionary services.

---

<sup>19</sup> Paragraph 9.1(1)(i) of the current *Broadcasting Act* provides that the Commission may impose conditions of service that it considers appropriate for the implementation of policy objectives of the *Broadcasting Act* respecting a requirement, without terms and conditions, for a person carrying on an online undertaking that provides the programming services of other broadcasting undertakings in a manner that is similar to a distribution undertaking to carry programming services, specified by the Commission, that are provided by a broadcasting undertaking.

69. In Broadcasting Decision 2022-165, the Commission renewed the broadcasting licences for the Canadian Broadcasting Corporation's (CBC) radio and television services. In that decision, the Commission established expenditure requirements for video productions made by Indigenous producers and imposed exhibition requirements for the broadcast of Indigenous musical selections on all of CBC's English- and French-language radio stations. In addition, the Commission required the CBC to engage in consultations with Indigenous Peoples every two years to ensure that the public broadcaster's programming meets their needs.
70. The Commission recognizes the importance of engaging and consulting with Indigenous Peoples, including broadcasters and creators, in the development of new definitions and supports for Indigenous content, as they are best placed to determine what is required to meet the needs and interests of Indigenous creators and audiences. It is therefore the Commission's intention, as part of a future proceeding, to hold a public consultation process that will include a focus on definitions and supports for Indigenous content.
71. In light of the above, the Commission invites interested persons to respond to the following questions:
- Q28. How can Indigenous creators and storytellers best be supported to ensure Indigenous stories are told and accessible on multiple platforms, including online services?
- Q29. Should all broadcasting undertakings (both online and traditional) be required to make available or broadcast certain amounts of Indigenous audio or video content on their services, including content in Indigenous languages? Are spending requirements a more appropriate means of supporting the creation, promotion and discoverability of Indigenous content? Should the approaches differ for audio and video content? Are there other incentives or supports that could be used to meet the Commission's objectives?
- Q30. What incentives or other supports could be established to increase the number of Indigenous creators and storytellers who occupy key creative positions in regard to the production of Canadian programming?
- Q31. What incentives or other supports could be established to increase the number of Indigenous artists?

### **Diversity and inclusion**

72. The current *Broadcasting Act* emphasizes that the Canadian broadcasting system should serve the needs and interests of all Canadians, including Canadians from Black or other racialized communities and Canadians of diverse ethnocultural backgrounds, socio-economic statuses, abilities and disabilities, sexual orientations, gender identities and expressions, and ages. The Commission will therefore consider options to better support and incent the creation and distribution of Canadian content by

communities that are currently under-represented in the broadcasting system, while also ensuring that this content is reflective of and relevant to these communities.

73. The Commission has employed several strategies to promote and encourage the production and distribution of content that is created by communities reflecting Canada's diversity in the Canadian broadcasting system, such as:
- the licensing of ethnic and third-language radio and television services;
  - expenditure requirements for video programming that is broadcast by the CBC's English- and French-language services and produced by OLMC producers, racialized producers, producers with disabilities, and producers who self-identify as 2SLGBTQI+;
  - requirements for the CBC to consult every two years with Canadians from OLMCs, racialized Canadians, Canadians with disabilities and Canadians who self-identify as 2SLGBTQI+ to ensure that the public broadcaster's programming meets their needs;
  - a must-offer status for OUTtv (service with 2SLGBTQI+ focused programming) in English-language markets;
  - mandatory distribution of OMNI Regional (multilingual multi-ethnic discretionary service), TVA (French-language service), UNIS TV (a service focused primarily on reflecting the diversity of the Canadian Francophonie, including OLMCs) and AMI-tv, AMI-télé, AMI-audio and Canal M (services providing a variety of described and closed-captioned programming) on the digital basic service; of ICI RDI (the CBC's French-language news channel) in English-language markets; and of CBC News Network (the CBC's English-language news channel) in French-language markets;
  - the Commission's [Official Languages and Minority Communities Discussion Group](#);
  - annual reports on cultural diversity;
  - the imposition of closed captioning and described video requirements; and
  - the [Women in Production initiative](#).
74. The Commission acknowledges, however, that there continues to be a demand for more content and better reflection in content of members of these communities within the Canadian broadcasting system. Additional initiatives are likely necessary in order to achieve greater diversity and inclusion within the Canadian broadcasting system.

75. The measurement of diversity content also remains difficult, as the metadata to identify it is not always available or accessible. Moreover, the ways in which such content is categorized and the methods of measurement are not consistent.
76. In light of the above, the Commission invites interested persons to respond to the following questions:

Q32. How are online undertakings currently supporting the production and discoverability of diverse and inclusive audio and video content? What are some of the most successful initiatives? Should they be adapted to specifically promote diverse and inclusive Canadian content? If yes, how could they be adapted?

Q33. Should the Commission consider requirements, incentives, or both to best ensure that audio and video content is created by diverse and inclusive groups currently under-represented in the Canadian broadcasting system? Are there different considerations for traditional versus online undertakings? Audio versus video content or services?

Q34. Would reporting requirements, whether on content or key creative positions, be considered an efficient tool to incentivize increased diversity and inclusion in programming? If yes, how could this apply to audio and video content or services? To news and sports programs?

Q35. How can the Commission best ensure the creation and discoverability of content from OLMCs and from regions outside major metropolitan centres on multiple platforms?

#### **Promotion and discoverability**

77. In addition to the objective of creating Canadian and Indigenous content, the promotion, discoverability and distribution of Canadian and Indigenous audio and video content, both domestically and internationally, is vital for the continued success of the Canadian broadcasting industry.
78. One of the key mechanisms for ensuring the availability of Canadian programming has been exhibition requirements. For example, private radio stations are generally required to devote a certain percentage of their weekly music broadcast to Canadian content, including at least 35% of the Popular Music (content category 2) they broadcast each week.<sup>20</sup> Discretionary services that do not provide third-language programming are generally required to devote at least 35% of programs broadcast during each broadcast year to the broadcast of Canadian programs.
79. In addition, the Commission has put in place incentives to encourage the promotion of Canadian programs. Independent programming services can count expenses for third-party promotion of Canadian programs towards a maximum of 10% of their

---

<sup>20</sup> See section 2.2 of the *Radio Regulations, 1986*. In regard to the content categories and subcategories for radio, see Broadcasting Regulatory Policy 2022-333.



CPE. In addition, 75% of local availabilities<sup>21</sup> must be made available in each broadcast day for use by licensed BDUs to promote first-run, original Canadian programs.

80. The Commission recognizes that these types of requirements are less effective in an on-demand/online context where the number of available programs is unlimited. In addition, with varying business models and approaches, it is likely that online undertakings can contribute in different ways and will have new tools at their disposal to maximize the discoverability of content. The Commission also recognizes that measuring the value of proposed promotion and discoverability commitments will be challenging, as will be monitoring their success.

81. As indicated above, the Commission intends to apply an approach that focuses on desired performance standards and measures of success without specifying the means or the method for achieving them. In this regard, the Commission does not intend, at this time, to prescribe or require an undertaking to use a certain method or tool in order to achieve desired promotion and discoverability outcomes. For example, the Commission would not require an undertaking to change marketing strategies or prescribe specific home page or search engine functions. Moreover, the current *Broadcasting Act* prohibits the Commission from making orders pursuant to paragraph 9.1(1)(e)<sup>22</sup> that that would require the use of a specific algorithm or source code. It would be up to the undertakings to decide which tools are best suited to achieve the identified outcomes regarding promotion and discoverability. However, the Commission will need to understand how those tools are utilized and measured to assess whether the identified outcomes are being achieved.

82. In light of the above, the Commission invites interested persons to respond to the following questions:

Q36. How can the Commission ensure that online undertakings make Canadian and Indigenous audio and video programming available in Canada and abroad? What types of requirements or incentives would best optimize the distribution of Canadian and Indigenous content, both internationally and domestically?

Q37. How can the Commission ensure that Canadian and Indigenous content is discoverable and promoted on online platforms? What incentives can be applied?

Q38. What is the role of content curators and aggregators, and playlists, in assisting with promotion and discoverability?

---

<sup>21</sup> The term “local availabilities” (or “local avails”) refers to periods of time within the programming of non-Canadian services in which BDUs have contracted with non-Canadian services for the right to insert announcements or promotions.

<sup>22</sup> Paragraph 9.1(1)(e) of the current *Broadcasting Act* provides that the Commission may impose conditions of service that it considers appropriate for the implementation of policy objectives of the *Broadcasting Act* respecting the presentation of programs and programming services for selection by the public, including the showcasing and the discoverability of Canadian programs and programming services, such as French-language original programs.

Q39. Should the Commission consider requirements, incentives, or both to best ensure that audio and video content created by equity-deserving communities is distributed, promoted and discoverable? Are there different considerations for traditional versus online undertakings?

## Procedure

83. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to the present proceeding. The Rules of Procedure set out, among other things, the rules for content, format, filing and service of interventions, answers, replies and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website under "[Statutes and Regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
84. The Commission will hold a public hearing commencing on **20 November 2023** at **Gatineau, Quebec** to address the matters set out in this notice.
85. The Commission invites comments that address the issues and questions set out above. The Commission will accept comments that it receives on or before **27 June 2023**. Only parties who file comments may file a reply to matters raised during the comment period. The deadline for the filing of replies is **12 July 2023**.
86. Today, the Commission has also launched a proceeding in regard to proposed *Online Undertakings Registration Regulations* and a related proposed exemption order (Broadcasting Notice of Consultation 2023-139). It has also launched a proceeding to review certain current exemption orders and the transition from conditions of exemption to conditions of service for broadcasting online undertakings (Broadcasting Notice of Consultation 2023-140). Interested persons should note that each of these notices of consultation initiates a separate proceeding, and that they must file comments on the record of each proceeding in which they would like to participate. Given certain common elements between the various proceedings, interested persons should monitor the developments of each proceeding.
87. The Commission requests that, whenever possible, parties provide evidence in support of their comments or proposals. The questions in this notice are numbered, and the Commission asks that parties identify the number for each of the questions to which they are responding. In addition, the Commission may ask parties to respond to additional questions. These questions and the responses will be placed on the public record. Public interest and consumer groups that need help with the cost of participating in this proceeding can apply to the BPF. Information on this fund can be found on the [BPF website](#).

88. The intervention must include one of the following statements in either the first or the last paragraph:

1. I request to appear at the public hearing.
2. I do not want to appear at the public hearing.

89. Interested persons who request to appear at the public hearing must indicate whether they prefer to participate

- virtually from their home or office; or
- at the main location for the public hearing in Gatineau.

90. Following the public hearing, parties may have an opportunity to file brief final written comments.

91. Parties who wish to appear at the public hearing must provide reasons why their written intervention is not sufficient and why an appearance is necessary. In addition, parties requiring communications support must state their request for such support on the first page of their intervention. Only those parties whose requests to appear have been granted will be invited by the Commission to appear at the hearing.

92. Interested persons are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position but do not wish to appear at the hearing. Information on how to file this type of submission, known as a joint supporting intervention, as well as a template for the covering letter to be filed by the parties, can be found in Broadcasting Information Bulletin 2010-28-1.

93. The Commission encourages interested persons and parties to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.

94. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line **\*\*\*End of document\*\*\*** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.

95. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that allow text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.

96. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

**by completing the**  
[\[Intervention/comment/answer form\]](#)

or

**by mail to**  
CRTC, Ottawa, Ontario K1A 0N2

or

**by fax at**  
819-994-0218

97. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing, or where required, service of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed or served. The Commission advises parties who file or serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
98. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
99. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.
100. Persons requiring communications support such as assistive listening devices and sign language interpretation are requested to inform the Commission at least 45 days before the commencement of the public hearing so that the necessary arrangements can be made.

### **Important notice**

101. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, fax, email or through the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca), becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, email addresses, postal/street addresses, and telephone and fax numbers.

102. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
103. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
104. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

### **Availability of documents**

105. Links to interventions and replies filed for this proceeding, as well as other documents referred to in this notice, are available on the Commission's "[Consultations and hearings: have your say](#)" page.
106. Documents are available upon request during normal business hours by contacting:

Documentation Centre  
[Examinationroom@crtc.gc.ca](mailto:Examinationroom@crtc.gc.ca)  
Tel.: 819-997-4389  
Fax: 819-994-0218

Client Services  
Toll-free telephone: 1-877-249-2782  
Toll-free TTY: 1-877-909-2782

Secretary General

### **Related documents**

- *Call for comments – Review of exemption orders and transition from conditions of exemption to conditions of service for broadcasting online undertakings*, Broadcasting Notice of Consultation CRTC 2023-140, 12 May 2023
- *Call for comments – Proposed Regulations for the Registration of Online Streaming Services and Proposed Exemption Order regarding those Regulations*, Broadcasting Notice of Consultation CRTC 2023-139, 12 May 2023
- *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2022-333, 7 December 2022

- *Revised Commercial Radio Policy*, Broadcasting Regulatory Policy CRTC 2022-332, 7 December 2022
- *Canadian Broadcasting Corporation – Various audio and audiovisual services – Licence renewals*, Broadcasting Decision CRTC 2022-165 and Broadcasting Orders CRTC 2022-166 and 2022-167, 22 June 2022
- *Standard requirements for on-demand services*, Broadcasting Regulatory Policy CRTC 2017-138, 10 May 2017
- *Policy framework for Certified Independent Production Funds*, Broadcasting Regulatory Policy CRTC 2016-343, 25 August 2016
- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)*, Broadcasting Order CRTC 2012-409, 26 July 2012
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Changes to certain practices for filing interventions – Expansion of filing practices to include the filing of joint supporting comments for broadcasting policy proceedings*, Broadcasting Information Bulletin CRTC 2010-28-1, 10 December 2010
- *New Media*, Broadcasting Public Notice CRTC 1999-84/Telecom Public Notice CRTC 99-14, 17 May 1999